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Drastic New Changes to the California Family Rights Act

California recently passed Senate Bill 1383 ("SB 1383"), which amends the California Family Rights Act ("CFRA") starting on January 1, 2021. The CFRA allows employees to take up to 12 weeks of leave during a 12-month period for family and medical purposes. Under the current version of the CFRA, employers with fewer than 50 employees within a 75-mile radius are not required to give their employees leave under the CFRA. Now, employers with as few as five employees within a 75-mile radius will be subject to the leave requirements of the CFRA.

Not only will more employers be subject to the CFRA, but SB 1383 also will expand the circumstances in which employees are entitled to take leave. Before the change, the CFRA only allowed employees to take leave for their own serious health condition, or for leave necessary to care for children, parents, or spouses. Under the new law, employees also may take leave under the CFRA to care for grandparents, grandchildren, siblings, or domestic partners.

SB 1383's expanded definition of leave under the CFRA will further complicate the employer's efforts to comply with the Family Medical Leave Act ("FMLA"). Under the FMLA, employers with 50 or more employees must provide up to 12 weeks of leave for family and medical purposes. Typically, if an employee is entitled to leave under both the FMLA and the CFRA, the leave would run concurrently for a total of 12 weeks. Due to the expanded definition of leave under the CFRA, employers could face situations where an employee is eligible for leave under the CFRA but not under the FMLA. Under the new changes to the CFRA, an employer could be required to provide up to six months of leave for the year if the employee first qualifies for leave under the CFRA, then later under the FMLA.

The new law also eliminates employer rights that had existed under the CFRA. Under the prior version of the CFRA, employers were not required to grant leave for both parents to care for a child where both parents worked for the same employer. The employer only had to grant both employees a combined total of 12 weeks of leave. Starting in 2021, employers will be required to approve up to 12 weeks of leave for each parent under these circumstances. In addition, the prior version of the CFRA granted employers the right to refuse to reinstate an employee returning from leave if the employee's salary was within the highest paid 10% of employees within a 75-mile radius and if the refusal to reinstate was required to prevent substantial economic injury to the employer. The new law entirely removes the employer's right to refuse reinstatement.

Companies with employees in California need to be prepared to comply with the CFRA's new rules by January 1, 2021. If you have any questions about the myriad of leave laws, please contact your Kutak Rock attorney or any of the attorneys in the [Employment Law Group](#), and we would be happy to discuss this with you. You may also visit us at www.KutakRock.com.

